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9 Randall and Christina Wanser

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 Randall and Christina Wanser

13 Debtor

14 ) Case No.: 09-47635

15 ) Chapter: 11

16 )  
17 ) MOTION TO AVOID LIEN (SECOND  
18 ) DEED OF TRUST) AND TO VALUE  
19 ) COLLATERAL OF CREDITOR HANSEN  
20 ) PROPERTIES LLC ON REAL PROPERTY  
21 ) AND POINTS AND AUTHORITIES  
22 ) THEREON

23 MOTION IS HEREBY MADE for an order valuing the property secured by creditor  
24 HANSEN PROPERTIES LLC and avoidance of their lien (second deed of trust).

25 This case was commenced by filing a voluntary petition for relief under Chapter 11 of the  
26 Bankruptcy Code. This motion is brought pursuant to 11 U.S.C. section 506 and Bankruptcy  
Rule 3012. This motion is based upon this Motion and Points and Authorities and the Notice of  
Motion filed simultaneously herewith.

27 **I. CREDITOR'S CLAIM SECURED BY A LIEN IS ONLY SECURED TO THE**  
28 **EXTENT OF THE VALUE OF SUCH CREDITOR'S INTEREST IN SAID**  
29 **PROPERTY**

30 "An Allowed claim of a creditor secured by a lien on property in which the estate has an  
31 interest or that is subject to set off under section 553 of this title, is a secured claim to the extent  
32 MOTION TO AVOID LIEN (SECOND DEED OF TRUST) AND VALUE COLLATERAL OF CREDITOR HANSEN  
33 PROPERTIES LLC AND POINTS AND AUTHORITIES THEREON

1 of the value of such creditor's interest in the estate's interest in such property..." 11 U.S.C.  
2 section 506(a)(1).

3 Subsection (a) of 11 U.S.C. section 506 determines the amount of a secured claim. Under  
4 Section 506(a)(1), a creditor with a lien has an allowed secured claim only to the extent of the  
5 amount of value of the collateral.

6 II. BANKRUPTCY RULE 3012 ALLOWS THE COURT TO DETERMINE THE  
7 VALUE OF A CLAIM

8 Rule 3012 implements section 506(a) of the Code with respect to valuation of a secured  
9 claim in order to determine the extent to which the property is secured or unsecured.

10 III. FACTS

11 1. On August 19, 2009 the debtors Randall and Christina Wanser (hereinafter "Movant")  
12 filed a petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code.

13 2. The Movant's real property, under which creditor HANSEN PROPERTIES LLC  
14 ("Creditor") claims a secured interest, is commonly known as 3146 Diablo View Road ,  
15 Lafayette CA 94549 ("Real Property") and is more fully described in Exhibit 1 attached hereto.  
16

17 3. The Fair Market Value ("FMV") of the Real Property at the time this bankruptcy was  
18 filed was \$650,000, as stated in the Hernwood Associates appraisal dated August 9, 2009 and  
19 which is attached hereto as Exhibit 2 and incorporated herein by reference. A second appraisal  
20 prepared August 11, 2009 by Dennis P. Kerns of Apple Appraisal Inc. shows a value of  
21 \$690,000. A copy of the Kerns appraisal is attached hereto as Exhibit 3.

22 4. Creditor's lien on the Real Property, is a second deed of trust in the amount of \$350,000  
23 plus accrued interest. A copy of the front page of the Deed of Trust recorded August 21, 2008 in  
24 Contra Costa County records and designated as Document number 2008-0186715-00 is attached  
25 hereto as Exhibit 4. In addition to the deed of trust that is the subject of this motion, Creditor has  
26

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1 lien on Debtor's real property located at 61 Edmund Court in Walnut Creek. Nothing in this  
2 motion seeks to modify any lien rights Creditor has with respect to its claim against 61 Edmund  
3 Court.

4 5. The Real Property is also subject to the following described encumbrances of record:  
5 First mortgage to Wachovia Bank with a secured lien amount of \$865,000 plus accrued interest  
6 based upon a deed of trust recorded July 30, 2008 and designated as Document 2008-0168347-  
7 00 the front page of which is attached hereto as Exhibit 5. This loan is in the process of being  
8 modified and it is anticipated that the lien may be reduced to the amount of \$707,000. However,  
9 as of the filing of the Bankruptcy case, there had been no formal modification of the July 30,  
10 2008 Wachovia Deed of Trust. Even if the Wachovia lien will be modified or reduced this  
11 senior lien is for an amount that exceeds the value of the Real Property (\$650,000 - \$690,000).  
12

13 6. The second deed of trust held by Hansen Properties LLC in the amount of \$350,000 plus  
14 accrued interest is unsecured based on the value of the Real Property (\$650,000) and the senior  
15 lien in first position (\$865,000 or possibly 707,000). The net value of the Real Property after  
16 deducting the senior lien is anywhere between -\$215,000 and -57,000 assuming a value of  
17 \$650,000. Even if the property is worth \$690,000 the net value is still at the most -\$17,000.  
18

19 THEREFORE, Hansen Properties LLC's second deed of trust lien recorded August 21, 2008  
20 on the debtors' real property has no secured value. This second lien is therefore under – secured  
21 and should be treated in this chapter 11 as an unsecured claim.  
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2 IV. CONCLUSION

3 Based on the lack of equity in the property above and beyond the first lien of Wachovia  
4 Bank, the second deed of trust of Hansen Properties LLC described above should be deemed  
5 unsecured and the court issue the following Order:

6 A determination that the second deed of trust lien of Hansen Properties LLC on 3146 Diablo  
7 View Road , Lafayette CA 94549 is valued pursuant to 11 USC section 506(a) and FRBP 3012  
8 at \$0.00 and consequently Hansen Properties LLC does not have a secured claim based on this  
9 lien.

10 A finding that upon entry of the debtors' chapter 11 Discharge, the lien shall be voided  
11 pursuant to 11 U.S.C. section 1123(b)(5) and 1141 and be of no effect; and  
12

13 If the movant's case is dismissed or converted before they obtain their chapter 11 discharge,  
14 the liens shall remain in full force and effect.

15 Respectfully Submitted:

16 Dated: September 2, 2009

/s/ Darya S. Druch

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18 Darya S. Druch  
19 Attorney for Debtor  
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